

ILLINOIS POLLUTION CONTROL BOARD
February 16, 2012

ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Complainant,)	
)	
v.)	AC 10-21
)	(IEPA No. 124-10-AC)
DAVID CHARLES BETTIS,)	(Administrative Citation)
)	
Respondent.)	

MICHELLE M. RYAN APPEARED ON BEHALF OF THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY; and

DAVID CHARLES BETTIS APPEARED *PRO SE*.

INTERIM OPINION AND ORDER OF THE BOARD (by J.A. Burke):

On April 7, 2010, the Illinois Environmental Protection Agency (Agency) filed an administrative citation against David Charles Bettis (respondent). The administrative citation involves respondent's property located on Route 108, one mile east of Carrollton, Greene County, known to the Agency as the "Carrollton Livestock Auction" and designated by the Agency as Site Code No. 0618025001. The Board finds that respondent violated Sections 21(p)(1) and (p)(3) of the Illinois Environmental Protection Act (Act) (415 ILCS 5/21(p)(1), (p)(3) (2010))¹ by causing or allowing open dumping of waste resulting in litter and open burning. Respondent is subject to statutorily-mandated civil penalties of \$1,500 per violation, for a total fine of \$3,000.

Respondent must also pay the hearing costs of the Agency and the Board. After finding the violations in this interim opinion and order, the Board directs the Agency and the Clerk of the Board to provide documentation of hearing costs, to which respondent may respond. After the time period for filing hearing costs expires, the Board will issue a final opinion and order assessing the civil penalty and appropriate hearing costs.

ADMINISTRATIVE CITATION PROCESS

Section 31.1 of the Act authorizes the Agency to enforce specified provisions of the Act through an administrative citation. 415 ILCS 5/31.1 (2010). The Agency must serve the administrative citation on the respondent within 60 days after the date of the observed violation.

¹ As there have been no meaningful substantive changes in the statutory language from prior versions of the Act (2006, 2008) in the provisions at issue, the Board's order will refer to the most current version.

415 ILCS 5/31.1(b) (2010); 35 Ill. Adm. Code 108.202(b). The Agency also must file a copy of the administrative citation with the Board no later than ten days after serving the respondent. 415 ILCS 5/31.1(c) (2010). To contest the administrative citation, the respondent must file a petition with the Board no later than 35 days after being served with the administrative citation. 415 ILCS 5/31.1(d) (2010). If the respondent timely contests the administrative citation, but the Agency proves the alleged violations at hearing, the respondent will be held liable for the civil penalty as well as the hearing costs of the Board and the Agency. *See* 415 ILCS 5/42(b)(4-5) (2010). Because the Act specifies the penalty for a violation in an administrative citation action, the Board cannot consider mitigating or aggravating factors when determining penalty amounts and rather must assess the civil penalties specified by the Act. *Id.* However, if the Board finds that the respondent “has shown that the violation resulted from uncontrollable circumstances, the Board shall adopt a final order which makes no finding of violation and which imposes no penalty.” 415 ILCS 5/31.1(d)(2) (2010).

PROCEDURAL HISTORY

On April 7, 2010, the Agency filed an administrative citation (Citation) against Respondent. The Agency served the citation on respondent on April 15, 2010. On May 20, 2010, respondent filed a petition (Petition) to contest the administrative citation. The Board accepted the petition for review on June 3, 2010.

Board Hearing Officer Carol Webb held a hearing at the City Hall in Carrollton, Greene County, on November 2, 2011. At that hearing, the following persons testified: Charlie King, an Agency inspector; Carmen Bridges, respondent’s mother; and David Charles Bettis, respondent. One exhibit was admitted into the record: the Agency’s inspection report dated February 19, 2010 (Report). Hearing Transcript (Tr.) at 11.

The hearing officer set a schedule for filing post-hearing briefs requiring the Agency to file a brief by November 29, 2011. The Agency filed its brief (Agency Br.) on that day. The hearing officer directed respondent to file a brief by December 13, 2011. Respondent did not file a post-hearing brief.

FACTS

Respondent owned the property from October 2008 through June 2011. Affidavit of D. Charles Bettis (Bettis Affidavit) (attached to respondent’s Petition) at ¶ 1; Tr. at 16. Respondent conducted weekly auctions at the property and referred to the property as the Carrollton Regional Stockyards. Bettis Affidavit ¶¶ 1-2. Respondent operated a “junk and hay sale” on the property which he described as “a miscellaneous sale . . . [w]e sold chickens and ducks and rabbits, . . . lawn mowers and farm equipment . . . , pocket knives . . . [w]hatever they brought to sell, we would sell it, and we sold firewood and then we sold hay.” Tr. at 17.

On February 19, 2010, an Agency inspector observed, walked, and photographed respondent’s property located on Route 108, one mile east of Carrollton, Greene County. Citation at 1; Affidavit of Charlie King attached to Citation (King Affidavit) at ¶ 2. The Agency

inspector prepared an inspection report, including five photographs. King Affidavit at ¶ 4; Tr. at 9-10.

At the time of the inspection, the property surface was partially wet and muddy, partially snow-covered and partially frozen. Report at 3. The Agency inspector observed wood, bed springs, box springs, car seat springs, glass, plastics, two television sets, paper, Styrofoam cups, cabinets, an empty bottle, cans, nails, and ashes. *Id.* at 4. The Agency inspector estimated that the volume of waste was 36 cubic yards. *Id.* The Agency inspector observed that a dump area and burn pile measured approximately 27 by 18 by 2 feet. *Id.* The Agency inspector took five photographs showing the aforementioned materials and an area where burning had occurred. *Id.* at 1-2, 6-8; Tr. at 9-10.

PARTIES' ARGUMENTS

Agency's Position

The Agency argues that respondent violated Sections 21(p)(1) and (p)(3) of the Act (415 ILCS 5/21(p)(1), (p)(3) (2010)) by causing or allowing the open dumping of waste resulting in litter and open burning. Agency Br. at 1. Respondent owned the property since October 2008 and was in control of the property at the time of the inspection on February 19, 2010. *Id.* at 3. The Agency notes respondents' testimony at hearing that fly dumping by unknown persons had been an ongoing problem and the prior owner had informed respondent of dumping on the property. *Id.* at 3.

The Agency notes that "open dumping" means "the consolidation of refuse from one or more sources at a disposal site that does not fulfill the requirements of a sanitary landfill" (415 ILCS 5/3.305 (2010)). Agency Br. at 1. Using statutory definitions of "refuse" and "waste," the Agency argues that wood, bed springs, box springs, television sets, paper, Styrofoam cups, cabinets, an empty bottle, glass, plastics, cans, nails, and ashes were found at the property and constitute "discarded material" within the meaning of the term "waste." *Id.* at 2-3.

The Agency notes that the Board uses the definition of "litter" found in the Litter Control Act (415 ILCS 105/3(a) (2010)). Agency Br. at 5. The Agency contends that, according to the definition and supporting case law, the materials found on the property constitute litter. *Id.* Because these items were found at the property, the Agency asserts that respondent violated Section 21(p)(1) of the Act (415 ILCS 5/21(p)(1)). *Id.*

The Agency notes that "open burning" is defined by the Act as "the combustion of any matter in the open or in an open dump" (415 ILCS 5/3.300 (2010)). Agency Br. at 5. The Agency inspector observed partially burned waste in a burn pit, constituting a violation of Section 21(p)(3) of the Act (415 ILCS 5/21(p)(3) (2010)). *Id.* The Agency further argues that even if unknown parties conducted the open burning, respondent was responsible for the open dumping and, therefore, was responsible for open burning resulting from open dumping. *Id.* at 5-6.

The Agency states that respondent acknowledged that other, unknown individuals were dumping and burning waste on respondent's property. Agency Br. at 3. The Agency argues that even if someone else dumped or burned the waste, a person can cause or allow a violation of the Act without knowledge or intent. *Id.*, citing County of Will v. Utilities Unlimited, Inc. et al., AC 97-41, slip op. at 5 (July 24, 1997), citing People v. Fiorini, 143 Ill.2d 318, 574 N.E.2d 612 (1991). The Agency also argues that respondent was aware of fly dumping as evidenced by his testimony that he took steps to prevent it by erecting signs and announcing at the auctions not to dump on his property. Agency Br. at 3.

The Agency construes respondent's defense to include an argument that the violations were the result of "uncontrollable circumstances." Agency Br. at 3. The Agency argues that "[p]roperty owners are responsible for environmental violations on their property, unless the facts establish that they have no capability to control the source of the problem or that they have taken 'extensive precautions' against such violations." *Id.* at 4, citing Gonzalez v. Illinois Pollution Control Board, 2011 IL App 093021 ¶33 (citations omitted). The Agency argues that, even though respondent testified to erecting signs, making announcements not to dump, and installing lights, these acts do not amount to "extensive precautions." Agency Br. at 3-4. The Agency argues that allowing customers to store their items and giving customers access to the site throughout the week "is the real reason that the fly dumping continued unabated." *Id.* at 4.

Respondent's Position

Respondent did not file a post-hearing brief, so the Board will summarize the defenses that respondent argued in his petition for review and at the hearing. Respondent makes two arguments.

First, respondent argues that other people have dumped waste and started fires on his property and that he has not caused or allowed such activities. Petition at 1, Tr. at 15.

Second, respondent contends that he has done all he can to stop others from dumping on his property. Respondent posted 'no dumping' and 'no trespassing' signs and installed lights. Petition at 1; Tr. at 12, 15. Respondent announced before auctions that people were not allowed to dump furniture or other junk on the property. Petition at 1; Bettis Affidavit at ¶ 2; Tr. at 18, 21. Respondent states that he cannot afford security equipment such as cameras needed to catch the responsible persons. Petition at 1. In spite of respondent's efforts, other people dumped on his property and set fires.

Respondent states that he did not dump on the property or set materials on fire but was aware that others were dumping on his property. Petition at 1; Tr. at 15.

DISCUSSION

The Agency alleges that respondent violated Sections 21(p)(1) and (p)(3) of the Act by causing or allowing open dumping of waste in a manner resulting in litter (415 ILCS 5/21(p)(1) (2008)) and open burning (415 ILCS 5/21(p)(3) (2010)). Citation at 2.

Section 21(p) of the Act prohibits any person from causing or allowing open dumping in a manner which results in litter or open burning at the dump site. 415 ILCS 5/21(p)(1), (3) (2010).

Open Dumping

To prove a violation of Section 21(p) of the Act, the Agency must first prove that Respondent violated Section 21(a) of the Act by causing or allowing open dumping of waste. See IEPA v. Shrum, AC 05-18, slip op. at 7 (Mar. 16, 2006). Section 3.305 of the Act defines “open dumping” as “the consolidation of refuse from one or more sources at a disposal site that does not fulfill the requirements of a sanitary landfill.” 415 ILCS 5/3.305 (2010). “Refuse” means “waste” (415 ILCS 5/3.385 (2010)) and “waste” includes “garbage . . . or other discarded material . . .” (415 ILCS 5/3.535 (2010)).

The Agency inspector observed and photographed various items on the property on February 19, 2010 including wood, bed springs, box springs, car seat springs, glass, plastics, television sets, paper, Styrofoam cups, cabinets, an empty bottle, cans, nails, and ashes. Report at 4. Respondent did not dispute that these materials were on the property. Tr. at 12.

The Board finds that the materials found at the property constitute “any garbage...or other discarded material” (415 ILCS 5/3.535 (2010)) and, therefore, are waste. The record shows that the waste observed on the property was brought to the property from external locations and did not originate from the property. The Board finds that waste has been consolidated at the property from “one or more sources” (415 ILCS 5/21(a) (2010)). It is undisputed that the property does not meet the requirements of a sanitary landfill. Therefore, the Board finds that “waste” has been “open dumped” at the property in violation of Section 21(a) of the Act.

Litter

The Act does not define “litter,” however, previous Board decisions defined litter using the statutory definition in the Illinois Litter Control Act:

‘Litter’ means any discarded, used, or unconsumed substance or waste. ‘Litter’ may include, but is not limited to, any garbage, trash, refuse, debris, rubbish . . . or anything else of an unsightly or unsanitary nature, which has been discarded, abandoned, or otherwise disposed of improperly.

415 ILCS 105/3(a) (2010); see St. Clair County v. Louis I. Mund, PCB 90-64, slip op. at 4, 6 (Aug. 22, 1991).

On February 19, 2010, the property contained discarded materials such as wood, bed springs, box springs, car seat springs, glass, plastics, television sets, paper, Styrofoam cups, cabinets, an empty bottle, cans, nails, and ashes. Report at 4. The Agency inspector estimated that the volume of waste was 36 cubic yards. Report at 4. The Board finds that these materials

fall within the definition of “litter” (415 ILCS 105/3(a) (2010)) and that respondent violated Section 21(p)(1) of the Act.

Open Burning

“Open burning” is defined in Section 3.300 of the Act as “the combustion of any matter in the open or in an open dump.” 415 ILCS 5/3.300 (2010). The Agency inspection report showed visual evidence of burning at the property, including a burn pile and ashes. Report at 4. The burning of waste at the property constituted “open dumping of waste in a manner that results in . . . open burning” in violation of Section 21(p)(3) of the Act. 415 ILCS 5/21(p)(3) (2010). The Board finds that respondent violated Section 21(p)(3) of the Act by causing or allowing the open dumping of waste, resulting in open burning.

Respondent’s Defenses

Respondent asserts that other persons dumped materials at the property without respondent’s permission and the open burning was caused by trespassers. Petition at 1; Bettis Affidavit at ¶ 3; Tr. at 15. However, a person can cause or allow open dumping in violation of the Act without knowledge or intent. See County of Will v. Utilities Unlimited, Inc., AC 97-41, slip op. at 10 (July 24, 1997) (“that others dumped some of the waste at the site is no defense”), citing, People v. Fiorini, 143 Ill.2d 318, 574 N.E.2d 612 (1991). The Board previously has held that a landowner can be held liable for “causing or allowing” open dumping even if the landowner allegedly did not actively participate in the dumping. See IEPA v. Shrum, AC 05-18, slip op. at 8 (March 16, 2006).

Respondent became the owner of the property in 2008 and owned the property on the day of the inspection. Bettis Affidavit at ¶ 1; Tr. at 16. Further, the record shows that respondent controlled activities on the property. For example, respondent conducted auctions and other business activities at the property. Tr. at 17. Respondent also erected signs, installed lights, and removed debris from the property. *Id.* at 12, 15. However, respondent did not properly secure the property to avoid dumping on his property. Testimony at hearing included statements that respondent did not put up chains across driveways because respondent did not want to refuse access to customers. *Id.* at 18. Respondent provided unrestricted access to bring in materials all week long and set them up for sale on Thursday. *Id.* Respondent intentionally left the property open to potential dumpers. Respondent did not properly secure the property to prevent the dumping and, therefore, is liable for causing or allowing open dumping under the Act.

If the Board finds that respondent “has shown that the violation resulted from uncontrollable circumstances, the Board shall adopt a final order which makes no finding of violation and which imposes no penalty.” 415 ILCS 5/31.1(d)(2) (2010). This defense is available only where the violation resulted from uncontrollable circumstances. IEPA v. Brown, AC 04-82, slip op. at 9 (May 19, 2005). Here, the Board finds no such uncontrollable circumstances.

Respondent asserts that he has done all he can to prevent dumping. Petition at 1. Respondent posted ‘no dumping’ signs, posted ‘no trespassing’ signs, and installed lights.

Petition at 1; Tr. at 12, 15. Respondent announced before auctions that people were not allowed dump waste on the property. Petition at 1; Bettis Affidavit at ¶ 2; Tr. at 18, 21. However, as discussed above, respondent intentionally allowed unimpeded access to the property and is liable for open dumping under the Act.

Respondent further stated that he could not afford security equipment such as cameras. Petition at 1; Tr. at 15. The Board previously has held that lack of financial resources to remove waste from a site is irrelevant to the statutory defense of “uncontrollable circumstances.” IEPA v. Hill, AC 09-40, slip op. at 10-11 (Oct. 7, 2010) (lack of financial resources to remove waste is not an “uncontrollable circumstance”). Similarly, the Board finds that respondent’s lack of financial resources is irrelevant to the defense of uncontrollable circumstances.

Civil Penalties and Hearing Costs

Because the Board finds that respondent violated Sections 21(p)(1) and (p)(3) of the Act on February 19, 2010, and those violations were not the result of uncontrollable circumstances, the Board now discusses civil penalties and hearing costs, as set forth in Section 42(b)(4-5) of the Act (415 ILCS 5/42(b)(4-5) (2010)).

In an administrative citation action under Section 31.1 of the Act, any person found to have violated any subsection of Section 21(p) of the Act shall pay a civil penalty of \$1,500 for each subsection violated, except that the civil penalty amount shall be \$3,000 for each violation of any subsection of Section 21(p) that is the person's second or subsequent adjudicated violation of that provision. 415 ILCS 5/42(b)(4-5) (2010).

The Board finds that the violations in the administrative citation were respondent’s first violations. Therefore, the statutory penalty will be \$1,500 for each violation of the Act. The respondent violated Sections 21(p)(1) and (p)(3), therefore his total penalty will be \$3,000.

The Board directs the Agency and the Clerk of the Board to file hearing costs documentation, to which respondent may respond within 21 days after service of the claimed costs. 35 Ill. Adm. Code 108.506(a). After the time periods for the filings on hearing costs have run, the Board will issue a final opinion and order imposing civil penalties and assessing appropriate hearing costs.

CONCLUSION

After reviewing the record in this case and the relevant portions of the Act, the Board finds that respondent caused or allowed the opening dumping of waste resulting in litter and open burning. Therefore, the Board finds that respondent has violated Sections 21(p)(1) and 21(p)(3) of the Act. 415 ILCS 5/21(p)(1), (p)(3) (2010). In its final order, the Board will order respondent to pay a civil penalty of \$3,000. The Board directs the Clerk and the Agency to document hearing costs and serve them upon respondent, after which the Board will issue a final order. 35 Ill. Adm. Code 108.502, 108.504, 108.506.

This opinion constitutes the Board's interim finding of fact and conclusions of law.

ORDER

1. The Board finds that David Charles Bettis violated Sections 21(p)(1) and (p)(3) of the Illinois Environmental Protection Act.
2. By March 5, 2012, the first business day after the 30th day following this order, the Illinois Environmental Protection Agency must file a statement of its hearing costs, supported by affidavit and served on respondent. 35 Ill. Adm. Code 108.502. By the same date, the Clerk of the Illinois Pollution Control Board must also file a statement of the Board's hearing costs, supported by affidavit and served on respondent. 35 Ill. Adm. Code 108.504, 108.506(a).
3. Respondent may file any objections to those statements within 21 days of service of those statements. 35 Ill. Adm. Code 108.506(a).
4. The Agency may then file a reply to respondent's response within 14 days of service of that response. 35 Ill. Adm. Code 108.506(b).
5. The Board will then issue a final order assessing a statutory penalty of \$3,000 for the violations and awarding appropriate hearing costs. 35 Ill. Adm. Code 108.500(b).

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above interim opinion and order on February 16, 2012, by a vote of 5-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board